

MEMORANDUM OF LAW

DATE: August 23, 1991

TO: Councilmember Tom Behr

FROM: City Attorney

SUBJECT: Leasing of City-owned Office Building - City Offer of
Incentives to Prospective Lessees

By memorandum dated August 5, 1991, copy attached, you asked whether there is any legal problem, i.e., "a gift of public funds" if the City offers financial incentives to private parties in connection with leasing a City-owned office building. Our conclusion is that the City may offer reasonable financial incentives to prospective lessees without violating the legal rule against gifts of public funds or property.

Attached for your information is a copy of a memorandum of law prepared by Curtis Fitzpatrick of this office which contains a thorough analysis of the subject of gifts of public funds. Mr. Fitzpatrick concluded that the City can sell its property and allow for term payments rather than requiring all cash, if consistent with market terms, without violating the rule against gifts of public funds.

In the particular fact situation you pose, a public purpose is served in providing financial incentives to prospective lessees to the extent such incentives are necessary in order to lease the property under the existing market conditions. The City cannot expect nor require more than "fair market rent."

If it is necessary as a practical matter to offer incentives, such a practice is legally allowable and does not constitute a "gift of public funds." Our conclusion is based upon the reasoning that, if the City does not offer fair market rate competitive terms in the leasing of its facilities, the facilities could remain vacant and the result would be a waste of a public asset.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Deputy City Attorney

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Attachments
ML-91-65